

**REMARKS/ARGUMENTS**

In view of the foregoing amendments and the following remarks, the applicant respectfully submits that the pending claims comply with 35 U.S.C. § 112 and are not rendered obvious under 35 U.S.C. § 103. Accordingly, it is believed that this application is in condition for allowance. **If, however, the Examiner believes that there are any unresolved issues, or believes that some or all of the claims are not in condition for allowance, the applicant respectfully requests that the Examiner contact the undersigned to schedule a telephone Examiner Interview before any further actions on the merits.**

The applicant will now address each of the issues raised in the outstanding Office Action.

**Non-Compliant Amendment**

Paper No. 20041101 indicated that the previous amendment filed on August 19, 2004 was not compliant with the Revised Amendment Practice (RAP) because line 5 of claim 1 included POS which was previously deleted. This supplemental amendment complies with RAP.

**Rejection under 35 U.S.C. § 103**

Claims 1, 3-10 and 13-24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,745,705 ("the Iguchi patent"). The applicant respectfully requests that the Examiner reconsider and withdraw this ground of rejection in view of the following.

Independent claims 1, 9, 10, 13, 14 and 24 are not rendered obvious by the Iguchi patent because the Iguchi patent neither teaches, nor suggests, point-of-sale terminal units that are not provided with any point-of-sale system execution program, but having such execution programs stored solely at the host.

As shown in Figure 11 of the Iguchi patent, the POS terminals store an execution program, sales data, setting data, etc. (See also, column 6, lines 1 and 2 and column 7, lines 10-49.) Indeed, the Examiner concedes that the Iguchi patent does not teach a POS terminal that does not have execution programs. (See, Paper No. 16, page 2.)

To compensate for this admitted deficiency, the Examiner argues that maintenance systems with a POS system having "dumb" terminals are common knowledge within the POS art and that it would have been obvious to provide a POS terminal without execution programs in the Iguchi system. (See, Paper No. 16, page 2.) However, the Examiner does not substantiate his claim of common knowledge in the art, for instance by citing a prior art reference in the rejection of the claims. If the Examiner maintains this rejection in any future actions, the applicant respectfully requests that the Examiner cite a prior art reference in any rejections.

Moreover, the Examiner provides no suggestion for modifying the Iguchi patent as proposed, but merely concludes that providing such a point-of-sale terminal unit would have been obvious. Thus, the Examiner has not established a *prima facie* case of obviousness. (See MPEP 706.02(j).) If the Examiner maintains this rejection in any further actions, the applicants respectfully request that the Examiner cite a suggestion, in the prior art, to

modify the point-of-sale terminal unit as proposed by the Examiner.

Accordingly, independent claims 1, 9, 10, 13, 14 and 24 are not rendered obvious by the Iguchi patent for at least the foregoing reason. Since the remaining claims depend, either directly or indirectly, from claims 1, 9, 10, 13 14 and 14, these claims are similarly not rendered obvious by the Iguchi patent. With respect to the dependent claims, the applicants respectfully note that since the Examiner did not address the features of these dependent claims, he did not make a prima facie showing of obviousness. If the Examiner maintains this rejection in any further actions, the applicant respectfully requests that the Examiner address each and every feature of the pending claims.

**Reference of Interest**

The Examiner cited U.S. Patent No. 5,426,427 ("the Chinnock patent"). The Chinnock patent concerns transferring a connection between a data terminating user and a first data terminating host to a second data terminating host (See, e.g., column 1, line 66 through column 2, line 2.). Although the Chinnock patent notes that a user terminal may be a "dumb terminal", apparently it does not concern point-of-sale terminals, nor does it describe what is and isn't stored on the user terminal if it is a dumb terminal. If the Examiner intended to rely on the Chinnock patent to support a rejection, whether or not in a minor capacity, the Chinnock patent should be positively included in the statement of the rejection. See In re Hoch, 166 U.S.P.Q. 406, 407 n.3 (CCPA 1970).

Conclusion



In view of the foregoing amendments and remarks, the applicant respectfully submits that the pending claims are in condition for allowance. Accordingly, the applicant requests that the Examiner pass this application to issue.

Respectfully submitted,

December 1, 2004



John C. Pokotylo

John C. Pokotylo, Attorney  
Reg. No. 36,242  
Tel.: (732) 542-9070

CERTIFICATE OF MAILING under 37 C.F.R. 1.8(a)

I hereby certify that this correspondence is being deposited on **December 1, 2004** with the United States Postal Service as first class mail, with sufficient postage, in an envelope addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.



John C. Pokotylo

36,242  
Reg. No.